

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

RONALD BATTISTELLA,

No. 12-54106

Debtor(s).

TRACY HOPE DAVIS, U.S. Trustee,

Plaintiff(s),

v.

A.P. No. 13-5137

RONALD BATTISTELLA,

Defendant(s).

Memorandum After Trial

I. Background

Debtor Ronald Battistella is 63 years old. He has been in the car business all his life. He has at times been very successful and at times faced financial difficulty. He always managed to survive until he lost his new car dealership as a result of the General Motors bankruptcy. His history since then has been one of downward spiral to his Chapter 7 bankruptcy filing in 2012.

In this adversary proceeding, the U.S. Trustee seeks to deny Battistella's discharge. She

1 alleges that Battistella's bankruptcy schedules were false because they failed to list a large debt to his
2 former spouse. She also alleges that he failed to keep or preserve his business records and failed to
3 explain satisfactorily a loss of assets before bankruptcy.

4 Battistella was forced back into the used car business after the loss of his General Motors
5 franchise. He purchased a corporation known as Stevens Creek Ventures, doing business as Thrifty
6 Auto Sales, selling vehicles acquired from a car rental company. He also continued to own a separate
7 corporation, Auto Source Financial doing business as Stevens Creek Auto Mall, which did a smaller
8 business in used cars and consigned cars. Battistella was the sole owner of both corporations, and did
9 not formally treat them as separate entities. His personal expenses were paid by the corporations.
10 Checks made payable to one corporation were sometimes deposited into the bank account of the other.

11 Having lost his bank financing with the loss of his new car dealership and desperately trying to
12 stay in business, Battistella turned to private parties as a source of financing, raising over a million
13 dollars by promising high rates of interest and eventually running afoul of state securities laws. After
14 bankruptcy, he served a term in state prison which is why this matter is only now coming to trial four
15 years after the bankruptcy filing and three years after this adversary proceeding was commenced.

16 At some time within a year or so before his bankruptcy filing, Battistella's financial records got
17 "fuzzy." Concentrating on trying to keep his businesses afloat, he failed to pay the bookkeeping
18 software firm which provided him with records and kept track of his sales. His businesses and records
19 were thrown into complete disarray when the State of California seized his bank accounts. To keep the
20 state from seizing more, Battistella began running business checks through his personal account and
21 pulling out cashier's checks to pay business expenses.¹

22 By the time Battistella finally threw in the towel and filed his bankruptcy petition, his financial
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24 ¹It would seem that this conduct, which Battistella readily admits, would be grounds for denial
25 of discharge as concealment of property with the intent to thwart a creditor pursuant to § 727(a)(2)(A)
26 of the Bankruptcy Code. See *In re Adeeb*, 787 F.2d 1339,1343 (9th Cir.1986); *In re Schafer*, 294 B.R.
126, 131 (N.D.Cal. 2003). However, the U.S. Trustee does not make this argument so the court will
not address it further.

1 records were scattered and in complete disarray. Much of the records were lost when the software firm
2 was not paid. Others were placed in storage and lost when the storage company was not paid. Still
3 others were allegedly seized by the State Board of Equalization. The end result, four years later, is that
4 Battistella is completely unable to produce records which might tell his creditors and the U.S. Trustee
5 about his business transactions and document his losses. All he has produced are some bank
6 statements, which show deposits and withdrawals but little else.

7 8 II.. Failure to Schedule Claim of Former Spouse

9 The U.S. Trustee argues that Battistella's discharge should be denied because he did not
10 schedule his former wife as a creditor even though she had a large claim. However, § 727(a)(4)(A) of
11 the Bankruptcy Code only makes false statements in schedules grounds for denial of discharge when
12 done knowingly and fraudulently. There is no evidence that failure to schedule the claim was anything
13 more than oversight. Battistella made no effort to hide the claim from anyone, and freely
14 acknowledged her claim at his examination in 2013. There is no suggestion of any benefit or
15 advantage Battistella could have gained by omitting the claim. Accordingly, the court declines to find
16 the omission from the schedules knowing or fraudulent.

17 18 III. Failure to Explain Loss of Assets

19 Section 727(a)(5) of the Bankruptcy Code bars a discharge to any debtor who has failed to
20 explain satisfactorily any loss of assets or deficiency of assets to meet debtor's liabilities. The U.S.
21 Trustee argues that Battistella cannot satisfactorily explain the loss of \$1.6 million he received from
22 investors. The court finds no merit to this argument. It does not take much of a leap of faith to believe
23 a car dealer who testifies that he sustained large losses while trying to keep his business afloat at the
24 height of the Great Recession. After considering Battistella's testimony and observing his demeanor,
25 the court does not believe that he has anything, let alone \$1.6 million, stuffed in a mattress somewhere.

1 IV. Failure to Keep and Preserve Books and Records

2 Even though the court does not believe that Battistella has secreted away the funds of his
3 investors, it is possible that he did so. Battistella cannot show otherwise because in his futile attempt
4 to stay in business he acted with increasing disregard for the business records which could have
5 documented his losses. Section 727(a)(3) bars a discharge to a debtor who has failed to keep or
6 preserve books, records or papers from which his financial condition or business transactions might be
7 ascertained, unless such failure was justified under all of the circumstances. While Battistella's failure
8 to preserve his financial records might be understandable, given his struggle to survive, it is not
9 justified. Battistella cannot reasonably expect a discharge from this court after taking large amounts of
10 money from investors and then placing himself in the position of being unable to show them, clearly
11 and in detail, what happened to their investments. The purpose of § 727(a)(3) is precisely to remove
12 the risk to creditors that the debtor may be withholding or concealing assets under cover of chaotic or
13 incomplete records. *In re Caneva*, 550 F.3d 755, 761 (9th Cir. 2008).

14 It is no defense that the records Battistella failed to keep or preserve were those of his
15 corporations. The statute does not limit inquiry to the debtor's individual records. Where, as here, a
16 debtor has full control of a corporation and the records of the corporation are necessary to document
17 the debtor's financial affairs, the failure of the debtor to ensure the preservation of corporate records
18 requires the court to deny the discharge. *In re Spitko*, 357 B.R. 272, 308 (Bkrtcy.E.D.Pa. 2006).

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20 V. Conclusion


21 While Battistella's explanation of his losses is credible, through his own neglect he failed to
22 keep and preserve the records which could have documented them. He finds himself in the position of
23 having little other than his word to explain to his creditors why they were not paid. Pursuant to §
24 727(a)(3) of the Bankruptcy Code, his creditors are entitled to more. Being unable to document his
25 financial affairs, Battistella is not entitled to a discharge.

26 For the foregoing reasons, judgment shall be entered denying Battistella's discharge. The U.S.

1 Trustee shall recover costs of suit.

2 This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and
3 FRBP 7052. Counsel for the U.S. Trustee shall submit an appropriate form of judgment forthwith.

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5 Dated: May 9, 2016

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9 Alan Jaroslovsky
10 U.S. Bankruptcy Judge
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